

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 15, 2012

**Elisabeth A. Shumaker
Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAURENCE R. GOODMAN,

Defendant - Appellant,

and

COUNTY OF GILPIN, COLORADO;
COLORADO DEPARTMENT OF
REVENUE; PATRICK MAXWELL; JAN
INGEBRIGSTEN,

Defendants.

No. 12-1311
(D.C. No. 1:11-CV-00274-RBJ-MEH)

ORDER

Before **LUCERO, TYMKOVICH**, and **MATHESON**, Circuit Judges.

This matter is before the court to consider the government's motion to dismiss and the response filed thereto. Upon consideration thereof, the motion is granted.

The government filed this civil action seeking to reduce outstanding federal income tax assessments to judgment, to foreclose federal tax liens on real property, and to force sale of the property. The district court entered judgment on the assessments and

ordered foreclosure, but did not order sale of the property. The government's motion for sale is still pending in the district court.

The government argues that this court lacks jurisdiction because the judgment is not final. This court has jurisdiction to review only final decisions, 28 U.S.C. § 1291, and specific types of interlocutory orders not applicable here. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Cunningham v. Hamilton County*, 527 U.S. 198, 204 (1999) (quoting *Van Cauwenberghe v. Biard*, 486 U.S. 517, 521-22 (1988)).

Under facts similar to those present here, this court has held that a judgment similar to the one at issue here is not final and appealable.

While the district court has entered judgment in favor of the United States for the dollar amounts of the [taxpayers'] unpaid tax assessments, and has concluded that the government is entitled to judgment as a matter of law foreclosing the tax liens against the [taxpayers'] property, the court left unresolved the government's ultimate request for relief seeking a forced sale of the property. The district court has not entered the government's proposed order for sale, which would leave nothing to be done but to make the sale and pay out the proceeds. Nor has it ended the litigation by denying the United States' Motion for Sale on the merits.

United States v. Simons, 419 Fed. Appx. 852, 856 (10th Cir. 2011) (unpublished) (citations and quotations omitted).

Because the judgment being appealed is not final or otherwise appealable, this appeal is **DISMISSED**.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, reading "Ellen Rich Reiter".

by: Ellen Rich Reiter
Jurisdictional Attorney